

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 OES-07 ACDA-12 CIAE-00 INR-10 IO-14
L-03 NSAE-00 NSC-05 EB-08 NRC-07 SOE-02 DODE-00
SS-15 SP-02 CEQ-01 AID-05 CEA-01 COME-00 EA-12
FRB-01 NEA-10 USIA-15 OPIC-06 TRSE-00 LAB-04
SIL-01 AGRE-00 OMB-01 /155 W
-----127025 230822Z /11

R 230121Z FEB 78
FM AMEMBASSY PARIS
TO SECSTATE WASHDC 7153
DEPARTMENT OF ENERGY WASHDC

UNCLAS SECTION 01 OF 02 PARIS 06192

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STATE PASS OES/NET FOR PROCHNIK, EUR/RPE FOR LAASE,
DOE PASS VANDERRYN

E.O. 11652: N/A
TAGS: ENRG, OECD
SUBJECT: AMENDMENTS TO THE STATUTE OF THE NUCLEAR
ENERGY AGENCY; POSSIBLE LEGAL PROBLEMS AFFECTING
IEA

REF: STATE 30626

1. AT THE MEETING OF THE OECD EXECUTIVE COMMITTEE
ON FEBRUARY 7, SEVERAL AMENDMENTS TO THE TEXT OF
DOCUMENT C(77)183 (MODERNIZATION OF THE STATUTE OF
THE OECD NUCLEAR ENERGY AGENCY) WERE PROPOSED.
SECRETARIAT PAPER, C(78)20, DATED FEBRUARY 14, 1978
WHICH DESCRIBES THESE CHANGES IS DISCUSSED BELOW.

2. THE PROPOSED DRAFT ENTRY IN THE COUNCIL MINUTES
WILL BE AMENDED TO NOTE THE STATEMENT OF THE
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PERMANENT REPRESENTATIVE OF SPAIN (OR ANY OTHERS
MAKING A STATEMENT). THE SPANISH STATEMENT WILL
INDICATE THAT SPAIN'S ENDORSEMENT OF THE REVISED NEA
MANDATE (PARTICULARLY ARTICLE 6) SHOULD NOT BE CON-
STRUED AS ALTERING ITS POSITION ON NON-PROLIFERATION.

3. THE WORDS "AND TRANSPORTS" WILL BE DELETED FROM

NEW ARTICLE 8AVI AND THE LAST LINE WILL THEN READ
AS FOLLOWS: "INSTALLATIONS AND MATERIALS." THIS
CHANGE WILL MAKE ARTICLE 8AVI SELF CONSISTENT IN
THAT THESE WORDS HAVE ALREADY BEEN DELETED FROM
SUBSECTION AII OF THE SAME ARTICLE. THE INTENT IS
TO EXCLUDE SUBJECTS AS TRAFFIC ACCIDENTS AND VEHICLE
SAFETY FROM CONSIDERATION. PHYSICAL PROTECTION
DURING TRANSPORT WOULD STILL BE COVERED BY THE
AMENDED STATEMENT.

4. IT IS ALSO PROPOSED TO AMEND NEW ARTICLE 13(B)
BY REPLACING THE WORDS "TERMS OF REFERENCE" BY THE
WORD "COMPETENCE" IN THE FIRST SENTENCE. THE
SENTENCE WOULD THEN READ, "THE STEERING COMMITTEE
SHALL CONSULT THOSE BODIES ON QUESTIONS WHICH COME
WITHIN THEIR COMPETENCE." IN THIS REGARD, MISSION
WISHES TO CALL ATTENTION TO PROBLEM RAISED IN THE
EXECCOMM DISCUSSION BY SEVERAL REPS WITH RESPECT TO
THE NEXT SENTENCE IN ARTICLE 13(B) WHICH READS,
"THESE BODIES SHALL CONSULT THE STEERING COMMITTEE
ON ALL QUESTIONS RELATING TO THE PRODUCTION AND
USES OF NUCLEAR ENERGY FOR PEACEFUL PURPOSES."
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THIS SENTENCE IMPOSES A CONSULTATIVE REQUIREMENT ON
RELEVANT OECD ORGANIZATIONS INCLUDING THE IEA.

ALTHOUGH THERE IS NO APPARENT SUBSTANTIVE CONFLICT WITH THE IEA WHOSE MANDATE CONTAINS SIMILAR WORDING, THE REQUIREMENT APPEARING IN AN NEA STATUTE APPROVED BY A COUNCIL DECISION MIGHT CONCEIVABLY IMPAIR THE GENERAL PRINCIPLE, RECOGNIZED IN THE COUNCIL DECISION (BINDING ON ALL EXCEPT THE THREE COUNTRIES WHO ABSTAINED) ESTABLISHING THE IEA, THAT THE AGENCY IS A COMPLETELY AUTONOMOUS OECD BODY. COULD FOR EXAMPLE ARTICLE 13(B) BE CONSTRUED AS GIVING NON-IEA PARTICIPATING COUNTRIES CERTAIN RIGHTS WITH RESPECT TO IEA MEMBERS REGARDING THE OBLIGATION OF THE IEA TO CONSULT THE NEA?

5. IEA LEGAL ADVISER SCOTT HAS INFORMED US THAT HE AND OTHER IEA STAFF MEMBERS REVIEWED THIS ARTICLE BEFORE IT WAS PUT BEFORE EXECUTIVE COMMITTEE AND FELT IT POSED NO PROBLEMS VIS-A-VIS IEA'S AUTONOMOUS STATUS.

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6. THE EXECUTIVE COMMITTEE WILL MEET MARCH 1, 1978 TO RECONSIDER ADOPTION OF NEW NEA MANDATE. WE WILL NEED GUIDANCE AND/OR AUTHORIZATION TO APPROVE REVISED DRAFT DECISION BY THAT DATE.
SALZMAN

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